

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1288 OF 2003

Keda Punjaram Shirsath ... Appellant

V/s.

The State of Maharashtra ... Respondent

Mr.Zakir Hussain for Appellant
Mrs.S.D. Shinde, APP, for Respondent

CORAM: V.G. PALSHIKAR &
SMT.NISHITA MHATRE, JJ.

DATED: NOVEMBER 9, 2006

ORAL JUDGMENT (PER SMT.MHATRE, J.):

. The accused has been convicted under sections 302 and 498A of the Indian Penal Code. He has been sentenced to life imprisonment and payment of fine. The accused has also been sentenced under section 498A to two years rigorous imprisonment and payment of fine. Both the sentences are to run concurrently. Being aggrieved by this judgment and order of the learned II Additional Sessions Judge, Nashik, the accused has preferred the present appeal.

2. It is the case of the prosecution that the accused was married to the victim, Pramila on 14.8.1997. This was the second marriage of both Pramila and the accused. Soon after the marriage, the accused who was addicted to alcohol, started ill treating and harassing the victim. The father of the victim tried to convince

the accused to overcome his drinking habit. He even ensured that the couple stayed with him, hoping that the accused would improve his behaviour. However, the accused returned home while the victim continued at her parental home for a few days. The victim then returned to her matrimonial home with her father on 6.2.1998. Her father stayed the night with her. While leaving the next morning, the accused demanded Rs.1000/- from his father in law to proceed to Nasik. Since his father in law did not have the money with him on that day, the accused was told that he would be paid by 9.2.1998. After arranging for the money, the father of the victim proceeded to the house of the accused on 10.2.1998 to hand over the amount.

3. While travelling in a jeep to the village of the accused, the jeep was stopped by one person who mentioned to the driver of the jeep that he required the jeep to take one woman who was burnt to hospital. The victim's father realised that it was the accused who had halted the jeep. He accompanied the accused to his house and found Pramila with burns all over her body. He enquired with his daughter as to how she had sustained the burns when she disclosed that it was because the accused had doused her with kerosene and set her ablaze at about 8 pm on previous day. This had happened because he had not fulfilled the demand of the accused for Rs.1,000/- within the stipulated time. The

victim disclosed to her father that her mother in law extinguished the fire and that she was kept alone in the house for the whole night, without any medical aid. The accused fled away from the spot when the victim incriminated him. The Police Patil who had arrived there and the father of the victim moved her to the Deola rural hospital. Her statement was recorded by the Special Executive Magistrate. As she required better medical facilities, the victim was taken to Nasik civil hospital where again her dying declaration was recorded by another Special Executive Magistrate. While at the Deola rural hospital, the Police Patil had also recorded her statement. In all these statements, the victim stated that she had been doused with kerosene by her husband and that he had set her ablaze. The victim then succumbed to the injuries sustained by her on the night between 10.2.1998 and 11.2.1998. The accused was apprehended on 26.2.2002. He was charged with having committed his wife's murder. He was tried by the Sessions Court, Nasik and has been convicted and sentenced as aforesaid.

4. To prove its case, the prosecution has examined 13 witnesses. PW1 is the father who has narrated the ill treatment meted out by the accused to his daughter. He has also spoken about the demand for Rs.1000/- made by the accused and his promise to fulfill the same. He has then stated that he was unable to meet the demand on

the appointed day and had sought to give the money to the accused the next day, by which time it was too late since the accused had already killed his daughter. The witness has also stated that his daughter orally disclosed to him that it was the accused who had set her ablaze after dousing her with kerosene since his demand for Rs.1000/- had not been met. She also disclosed to her father that her mother in law extinguished the fire.

5. PW2 who has been examined is the Doctor who treated the victim at Nasik civil hospital. This witness has stated that she was brought to the hospital after 1 pm. Her dying declaration was recorded at 3.25pm that day by the Special Executive Magistrate. He has also stated that the statement was recorded only after the Special Executive Magistrate had ascertained from him that the victim was conscious and able to have her statement recorded. This Doctor has proved the medical report maintained which indicates that the history of the patient was given by the patient herself. She was conscious and well oriented when she mentioned that she had suffered the burns because of her husband setting her ablaze on 9.2.1998 at about 8 pm.

6. PW3 is the Special Executive Magistrate who has recorded the dying declaration at Exhibit 17. He was called to the rural hospital, Deola. After ascertaining the condition of the victim, he has recorded her

statement. The dying declaration which is at Exhibit 17 bears an endorsement of the Doctor that the patient is conscious and was in a condition to give her statement. This dying declaration which has been proved by the Special Executive Magistrate, PW3 is consistent with the disclosure made by the victim to her father. She has stated that on 9.2.1998, her husband the accused set her ablaze after dousing her with kerosene since her father had not given him the agreed amount. The victim has stated that after she was set ablaze she ran out of the house when her mother in law extinguished the fire. While this was happening her husband was in the house. This dying declaration was recorded at about 10.50 am on 10.2.1998.

7. PW4 is the Special Executive Magistrate, who has recorded the dying declaration which is at Exhibit 12. This declaration was recorded in the civil hospital, Nasik. The testimony of this witness corroborates the testimony of PW2. The dying declaration has been recorded at 3.20 pm after ascertaining the orientation of the victim. Again, in this statement, the victim has implicated her husband and has stated that her mother in law extinguished the fire.

8. PW5 is the police constable who was present on duty on 10.2.1998. He rushed to the Deola rural hospital when informed by the Doctor on duty about the

victim having been admitted. This witness has also recorded the victim's statement which again is consistent with the dying declarations recorded. In fact, this statement is the first instance where the victim has implicated the accused.

9. Another dying declaration has been recorded at Exhibit 28 by the constable PW5. It is consistent with the other statements made of the victim.

10. PW6 is the Doctor who has conducted the postmortem at Civil Hospital, Nasik. He has stated that the victim had suffered 89% burn injuries.

11. The next witness examined by the prosecution is the Investigating Officer who has drawn up the spot panchanama. A plastic kerosene can, burnt pieces of a saree, a match box and burnt matchsticks, which were found at the spot were attached by him. This witness has stated that he had recorded the statements of some of the neighbours of the accused as also the mother of the accused. He has denied that the mother of the accused had stated to him that the victim had immolated herself.

12. The prosecution has then examined PW8 who is also an Investigating Officer. He has arrested the accused when he found him wearing saffron clothes and

posing as a Sadhu. The accused was arrested on 26.2.2002.

13. PW9 is the Doctor who attended the victim in Deola rural hospital. She has corroborated the statement made by the PW3 that the dying declaration was recorded by the Special Executive Magistrate only after ascertaining from her the condition of the victim.

14. On a consideration of the evidence led by the prosecution and the dying declarations made by the victim at various times we have no manner of doubt about the complicity of the accused. However, we would also have to consider the evidence led by the accused before reaching the final conclusion. The first witness examined on behalf of the accused is one of his neighbours. This witness claims that the victim set herself ablaze since the accused refused to accompany her to Nasik. DW2 is the mother of the accused. This witness has stated that she extinguished the fire when the victim told her that she had set herself on fire. This witness claims that the victim told her that she had committed this act because the accused refused to accompany her to Nasik. The witness then claims that she tried making arrangements for money in order to hospitalise the victim.

15. The third witness examined by the defence is a

relative of the victim. This witness states that the victim had an illicit relationship with somebody in Nasik. The next witness examined by the defence is a neighbour of the accused. He claims that the accused came to his field on 10.2.1998 in the morning and informed him that his wife had sustained burn injuries on the previous night when she had doused herself with kerosene and set herself alight. This witness is a Police Patil. He has been cross-examined extensively. He was present when the victim was admitted to Deola rural hospital.

16. On a consideration of the oral statements made by the victim to her father coupled with the dying declarations at Exhibits 17 and 12, we are of the opinion that the victim died a homicidal death and the accused is responsible for her death. All the dying declarations had been recorded after taking the necessary precautions of ascertaining the victim's consciousness and orientation from the medical officers attending her. In all her statements, the victim has consistently maintained that because her father was unable to meet the demand of the accused for Rs.1,000/- within the stipulated time, the accused had set her ablaze after dousing her with kerosene. She has also maintained that her mother in law extinguished the fire and that the accused had run away from the spot. The defence witnesses do not in any manner lend any credence

to the story of the accused that the victim had committed suicide. We therefore have no hesitation in accepting the case of the prosecution.

17. If the accused was in fact present when the victim had set herself ablaze as claimed by him and his mother, DW2, there is no evidence on record to indicate what prevented him from admitting her to hospital immediately. Nor is there any evidence on record to indicate that the accused was present at all when the victim was admitted to hospital the next day by her father. In fact, there is evidence on record to show that the accused had fled away from the spot after the victim disclosed to her father that it was the accused who was responsible for her burns. If what the accused contends is true that he was not responsible for the death of the victim, there is no explanation as to why he ran away from the spot and was apprehended only on 26.2.2002, i.e., 14 days later, disguised as a mendicant.

18. The learned Advocate appearing for the accused relies on the judgments in the case of *Kalu Ram v/s. State of Rajasthan*, (2000) 10 SCC 324 and submits that the act on the part of the accused was not intentional and that the conviction be altered from section 302 to section 304 Part II. A perusal of this case indicates that the facts are not similar to the present case. In

that case, the accused has set ablaze his wife but immediately tried to extinguish the fire. In the present case, the accused took no part in extinguishing the fire and it was in fact the mother in law of the deceased who put out the flames. In such circumstances, the submissions of the learned advocate for the accused are unacceptable.

19. On a consideration of the evidence on record and reappreciating the same, we find that the conclusions drawn by the learned trial Judge are correct. We uphold the findings of the learned Judge and the conviction of the Accused. Appeal dismissed.